

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own
Motion into Competition
for Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's Own
Motion into Competition for Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)
**(FCC Triennial Review
9-Month Phase)**

**Staff Report on the December 4, 2003 Collaborative
Workshop on Loop and Transport**

Pursuant to Administrative Law Judge (ALJ) Pulsifer's October 8, 2003 Ruling, the Telecommunications Division Staff (Staff) files its Report on the Collaborative Workshop on Loop and Transport held December 4, 2003.

I. Purpose of Workshop

The goal of the workshop, as stated in ALJ Pulsifer's October 8, 2003 Ruling, was to "...facilitate consensus on loop and transport issues,..." Staff prepared and distributed an agenda to all parties on the service list prior to the workshop. The agenda categorized three areas of discussion based on the November 20, 2003 Opening Testimony filed by SBC and Verizon regarding loop and transport issues and includes a description of the Federal Communication Commission's (FCC's) Triennial Review Order (TRO) responsibilities. The agenda also outlined discussion items related to process and scheduling issues. (See Attachment A to this Report). Though the workshop did not result in any substantive agreements, it did provide Staff with parties' views and concerns regarding the best way for the CPUC to proceed given the status of discovery and the current schedule for this track of the TRO proceeding.

II. Focus of Workshop

It became apparent early in the workshop that agreements about the transport routes and loop locations that SBC and Verizon claimed met the TRO's trigger guidelines would not be forthcoming. There were two main reasons for this impasse. First, Verizon and SBC did not have the responses to the CPUC data requests in time to include any of that information in their testimony. Instead, their analysis was based on the ILECs' own business records (e.g. collocation), public data sources and third-party information, all of which could not be verified without data from the CLECs. Second, both Verizon and SBC have requested the opportunity to supplement their testimony to both verify their assumptions and to add more routes

and/or customer locations to their showing based upon discovery responses.¹ Because SBC and Verizon's testimony is described as a *prima facie* showing and is not supported by facility data from its competitors, the CLECs were not able to respond to an uncertain set of impairment showings based on data that was not conclusive. Parties did express general disagreement with the assumptions made by the ILECs with respect to alternative facilities.

As a result, Staff decided and parties agreed that it would not be a good use of time to address the specifics contained in SBC and Verizon's testimony. The workshop focus moved to a discussion of procedural issues and steps to complete discovery in a timely way.

III. Workshop Results

Staff's agenda contained an item asking parties to make preliminary statements at the outset of the workshop. Staff clarified that the purpose of the statements was to allow parties to ask questions about SBC and Verizon's testimony as well as to get a reading on parties' thoughts about the ability to reach consensus, what the disputed issues were or were likely to be and to provide staff with an understanding of data needs. In addition, Staff asked SBC and Verizon to update the group on the status of their showing with respect to data needs and their desire to supplement the November 20th testimony.

PRELIMINARY STATEMENTS

Verizon. Verizon's impairment analysis was limited to transport and was based on collocation facilities contained in their business records. The routes identified were based on the assumption that if a CLEC has collocated in Office A and in Office Z, the CLEC has transport between those offices. Verizon also assumed that the CLEC had dark fiber in those facilities. Since the filing of the November 20th testimony, Verizon has received some responses to the CPUC's discovery, but those discovery responses are not sufficient to allow Verizon to verify its analysis. Verizon claimed that two of the respondents provided inadequate responses and that Verizon did not have responses from four of the CLECs identified as having alternative facilities. Finally, Verizon may want to file an impairment analysis for loop locations and supplement its transport filing once it has had the opportunity to review outstanding discovery.

SBC. SBC's impairment analysis addressed both loops and transport. Like Verizon, SBC relied on its own business records, public data, and information from third parties. SBC now has data that in part supports the November 20th proposal but also allows SBC to include additional customer locations to supplement its loop impairment analysis as well as to put forward a potential deployment case. SBC stated that it would not seek to include additional transport routes in supplemental

¹ SBC and Verizon differ as to their intentions to add to their "no impairment" showings. Those differences are described on page four of this report.

testimony but that it may seek to present a potential deployment analysis, if applicable, to the routes already identified. For loops, SBC's potential deployment case would be limited to areas where the evidence shows there has already been significant competitive deployment.

CALTEL. CALTEL raised a fundamental concern about the purpose of the workshop as well as the overall approach to meeting the FCC's mandate. In particular, concern was raised as to how the workshop discussion would affect any supplemental testimony filed by the ILECs. In terms of process, CALTEL urged the Commission to focus this workshop and this nine month proceeding on designing a comprehensive and efficient data gathering process to address concerns regarding erroneous "no impairment" findings. Finally, CALTEL noted that the varying degrees of impact that "no impairment" finding would have on small vs. larger competitors.

Pure UNE CLEC Coalition (Coalition). The Coalition's representative stated that the 6 carrier members rely exclusively on UNE-P to compete and need the ILECs to continue offering UNE-P in order to survive and to obtain enough capital to invest in facilities. The Coalition further stated that the goal of this proceeding is not to eliminate UNEs, but rather, to implement the Telecom Act. With respect to possible agreements, the Coalition does not agree with any of the impairment proposals offered by the ILECs, noting that the ILECs' assumptions were not reliable indicators of alternative facilities. In terms of possible agreement, the Coalition agreed with CALTEL by suggesting that there should be an effort made to design a rational data collection process. Finally, the Coalition objected to the ILECs' requests, in the context of this workshop, to change the procedural schedule, particularly regarding new testimony by the ILECs. The Coalition suggested that if the ILECs wish to change the schedule, they should file a motion with the ALJ to that effect, which would allow all parties to respond to any reasons proffered in support of the Motion.

AT&T. Because of the lack of specific data, AT&T claimed that parties cannot discuss the specifics regarding transport routes identified in the ILEC testimony. AT&T pointed out that the current schedule does not allow for ILEC supplemental testimony and particularly noted that reply testimony is not the proper venue for presenting supplemental information. In addition, AT&T claims that because the ILECs did not present a potential deployment case as part of their *prima facie* showing, they should not be permitted to do so as part of any supplemental round. AT&T essentially agreed with CALTEL and the Coalition and suggested that the most that could be accomplished in the workshop would be to get consensus on the specific information required by the TRO and establish a process to obtain it.

MCI. MCI agrees with CALTEL and AT&T regarding the need to establish a rational framework for collecting and analyzing data and that this exercise is more daunting for smaller carriers who are less equipped to address the requirements of a comprehensive data-gathering process. As with the other non-ILEC parties, MCI believes this process should be designed to prevent any incorrect "no impairment"

findings. MCI also agreed with the Coalition that this proceeding will likely have a major impact on smaller carriers.

PacWest. As a facilities-based CLEC, PacWest claimed that they are willing to buy facilities from alternative providers assuming that the quality is the same and the prices are competitive. They are concerned about the customer impact of a “no impairment” finding, in that customer choice will be limited. PacWest raised questions regarding the processes required to do business in a world without UNEs, such as how orders are placed, etc. As far as possible areas for agreement, PacWest also highlighted the need for a procedural framework and definitions, such as agreeing on a definition of “loop” and “route” and making sure that the parties and the Commission has evidence that meets those agreed-upon definitions. PacWest made a presentation highlighting definitional issues with respect to SBC’s depiction of loops and transport routes that SBC alleges met the TRO’s trigger requirements.

Allegiance. Allegiance pointed out that given the burdensome task of responding to the data requests, it is important to get consensus on definitions so that the data that is collected is useful.

PROCEDURAL ISSUES

SBC and Verizon will provide Staff with a document presenting their respective prioritized data needs and agreed to share that document with the other parties. The other parties can respond to SBC and Verizon’s presentation as well as present their own prioritizations.

The ILECs want the CPUC to develop a date certain for parties to respond to the CPUC-issued discovery. Once that date has been determined, and assuming the data is provided to SBC and Verizon, SBC proposes to file supplemental testimony 10-days from the date it receives the discovery response and Verizon proposes to file its testimony 5-days from the date it receives the discovery responses.

If supplemental testimony is allowed, SBC will not add transport routes but may add loop locations. Verizon will consider adding new transport routes and may present a loop deployment trigger analysis, depending on the data they receive. Most parties (except for the Coalition) proposed that supplemental testimony be limited to supporting the routes and locations contained in the ILECs’ November 20th testimony and that the due date for reply testimony should be deferred to allow parties’ to file one round of reply testimony. The Coalition opposed allowing the ILECs to supplement their testimony and proposed that the CPUC stick to the current schedule for the loop and transport proceeding.

The following table depicts Staff’s understanding of SBC and Verizon’s intentions with respect to supplemental testimony:

	Trigger/Loop	Trigger/Routes	Potential Dep.	Potential Dep.
	New Loops	New Routes	Loop	Transport
SBC	Yes	No	Yes	Yes ²
Verizon	Yes	Yes	No	No

SUMMARY OF AGREEMENT

1. SBC and Verizon will provide the Staff and the other workshop participants with a document that prioritizes the data they need to go forward with their loop and transport showing.
2. Parties agreed to a meet and confer to address discovery stalemates and definitional issues related to the CPUC and/or individual parties’ discovery.

POSSIBLE ISSUES FOR REPLY TESTIMONY

1. The FCC’s requirements for conducting impairment analysis.
2. The definition of “loop” and “transport route”.
3. SBC/Verizon’s assumptions regarding facilities that meet the TRO triggers.

² SBC’s potential deployment analysis for transport routes would be limited to supporting routes that were identified in its November 20, 2003 testimony.

IV. Attachments

- A. Agenda for CPUC Collaborative Workshop
- B. Post Workshop Status Report of AT&T
- C. Post Workshop Status Report of CALTEL
- D. Post Workshop Status Report of MCI
- E. Post Workshop Status Report of Pure UNE-P Coalition
- F. Post Workshop Status Report of SBC
- G. Post Workshop Status Report of Verizon

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December 11, 2003

